



DEPARTMENT OF HEALTH & HUMAN SERVICES

Food and Drug Administration
Rockville MD 20857

OCT 2 2001

Re: Paylean
Docket No. 01E-0229

#23

The Honorable Q. Todd Dickinson
Director of U.S. Patent and Trademark Office
Commissioner for Patents
Box Pat. Ext.
Washington, D.C. 20231

Dear Director Dickinson:

This is in regard to the application for patent term extension for U.S. Patent No. 4,690,951 filed by Eli Lilly & Co. under 35 U.S.C. § 156. The animal drug product claimed by the patent is Paylean (ractopamine hydrochloride), which was assigned new animal drug Application (NADA) No. 140-863.

A review of the Food and Drug Administration's official records indicates that this product was subject to a regulatory review period before its commercial marketing or use, as required under 35 U.S.C. § 156(a)(4). Our records also indicate that it represents the first permitted commercial marketing or use of the product, as defined under 35 U.S.C. § 156(f)(1), and interpreted by the courts in *Glaxo Operations UK Ltd. v. Quigg*, 706 F. Supp. 1224 (E.D. Va. 1989), *aff'd*, 894 F. 2d 392 (Fed. Cir. 1990).

The NADA was approved on December 22, 1999, which makes the submission of the patent term extension application on February 18, 2000, timely within the meaning of 35 U.S.C. § 156(d)(1).

Should you conclude that the subject patent is eligible for patent term extension, please advise us accordingly. As required by 35 U.S.C. § 156(d)(2)(A) we will then determine the applicable regulatory review period, publish the determination in the *Federal Register*, and notify you of our determination.

Please let me know if we can be of further assistance.

Sincerely yours,

Jane A. Axelrad
Associate Director for Policy
Center for Drug Evaluation and Research

cc: Frederick D. Hunter
Eli Lilly & Co.
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Indianapolis, IN 46285